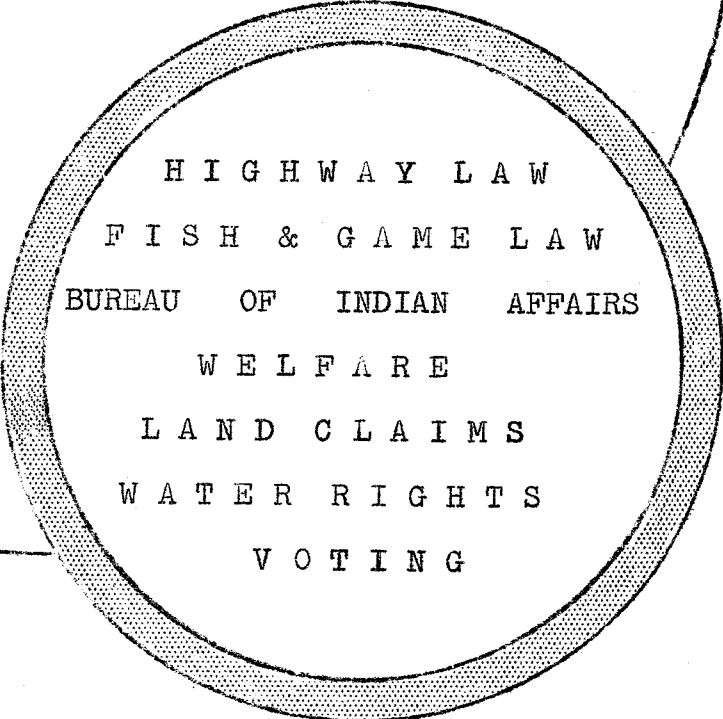


INDIAN
LAW
AND
ORDER

AS PERTAINS TO



HIGHWAY LAW
FISH & GAME LAW
BUREAU OF INDIAN AFFAIRS
WELFARE
LAND CLAIMS
WATER RIGHTS
VOTING

1962

ARIZONA COMMISSION OF INDIAN AFFAIRS

FOREWORD

The theme of the third joint meeting with the Inter-Tribal Council of Arizona was selected by our Tribal Leaders Advisory Committee as the most important problem facing the reservations at this time.

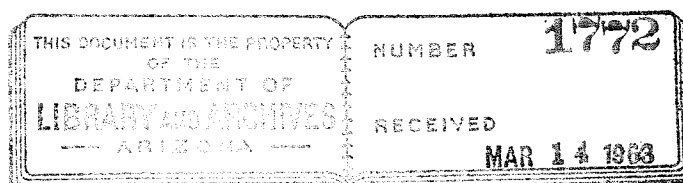
To afford the best possible coverage of the subject of law and order, we called on agency representatives of both state and federal governments, Senator Robert E. Morrow of our Senate Advisory Committee and Mr. C. M. Wright, Attorney, our Land Claims Consultant.

This report of the Commission section of the joint meeting is our effort to give those interested factual reference material that may be helpful in solving some of their Law and Order problems.

Sincerely

Paul Jones
PAUL JONES
Chairman

10-16-62



THE COMMISSION MEMBERSHIP

INDIAN MEMBERS

PAUL JONES (Chairman) NAVAJO
DANIEL EDDY (Vice-Chairman) MOHAVE
SAMUEL THOMAS PIMA
ENOS FRANCISCO. PAPAGO
CLARENCE WESLEY APACHE

NON-INDIAN MEMBERS AT LARGE

J. FERRELL COLTON. FLAGSTAFF
CLAY LOCKETT TUCSON

EX OFFICIO MEMBERS

PAUL J. FANNIN GOVERNOR
ROBERT W. PICKRELL ATTORNEY GENERAL
W. W. "SKIPPER" DICK SUP'T. OF PUBLIC INSTRUCTION
DR. LLOYD M. FARNER COMMISSIONER, STATE HEALTH DEP'T.

* * * * *

EXECUTIVE SECRETARY CHARLES F. GRITZNER
SECRETARY EVELYN COOPER

ARIZONA COMMISSION OF INDIAN AFFAIRS
1623 West Adams
Phoenix 7, Arizona

ARIZONA INTER-TRIBAL COUNCIL

Mrs. Eva Northrup - President

Mr. Harrington Turner - 1st Vice President

Mr. Harrison Porter - 2nd Vice President

Mr. Raymond Narcho - Secretary

Mr. Hampton Haozous - Treasurer

LAW AND ORDER ADVISORY COMMITTEE TO THE COMMISSION

Mr. Clifford Sorrells, Acting Chairman
Chief of Law Enforcement
Arizona Game and Fish Commission - Phoenix

Inspector Thomas Cochran
Arizona Highway Patrol - Phoenix

Mr. Grant Magleby
B.I.A. Area Criminal Investigator - Phoenix

Mr. Royal Marks, Attorney at Law
Phoenix

Honorable Robert Pickrell
Attorney General of Arizona - Phoenix

A G E N D A

MAY 25, 1962 MEETING

ARIZONA HIGHWAY AUDITORIUM
206 South 17th Avenue

1:00 P.M. AFTERNOON SESSION

THEME: L A W A N D O R D E R

Opening Remarks.....	Daniel Eddy	5
HIGHWAY LAW ENFORCEMENT.....	Larry Corcoran Public Information, Arizona Highway Patrol	5-10
FISH & GAME LAW ENFORCEMENT.....	Clifford Sorrells Chief, Arizona Game & Fish Department	10-13
PROBLEMS FACED BY WELFARE IN RELATION TO LAW & ORDER ON RESERVATIONS.....	Robert L. Bouvea District Supervisor, Arizona Department of Welfare	13-18
NEED FOR CLEARER UNDERSTANDING OF TRIBAL LAWS AND ENFORCEMENT.....	Grant W. Magleby Area Criminal Investigator, Bureau of Indian Affairs	18-22
VOTING AS PERTAINS TO RESERVATIONS...	Senator Robert E. Morrow, Mohave County	22-24
WATER RIGHTS.....	James E. Goodhue Staff Attorney, Office of the Solicitor, U. S. De- partment of the Interior, Los Angeles	24-31
LAND CIAIMS.....	C. M. Wright Attorney, Land Claims Consultant to the Commission Tucson	32-35
Question and Answer Period		35-42
OTHER RESOURCE PEOPLE		
The Law and Order Advisory Committee to the Commission		
The Tribal Leaders Advisory Committee to the Commission		
Others representing Law and Order on the Reservations		

5:00 P.M. Adjournment
Everyone is invited to attend a joint meeting with the
Inter-Tribal Council at 9:00 A.M. tomorrow at the same
location.

LAW AND ORDER

The afternoon session of the May 25th joint meeting of the Arizona Commission of Indian Affairs and the Inter-Tribal Council of Arizona was opened by our Vice-chairman, Mr. Daniel Eddy.

Vice-chairman Eddy:

The tribal leaders of Arizona as Advisory Committee members to the Commission have selected law and order as the subject of importance to be discussed at this joint meeting of the Commission and the Inter-Tribal Council.

Today, with the cooperation of state and federal agencies, Senator Morrow and Mr. C. M. Wright, Attorney, we are striving to offer you the best program possible on the several areas of law and order. Each person will speak to you in the order they appear on the agenda and on the subjects listed.

There will be a question and answer period following each speech and after the programmed session of the meeting until 5:00 P.M. time for adjournment.

We will begin with Mr. Larry Corcoran, Public Relations Officer, Arizona Highway Patrol.

Mr. Corcoran - HIGHWAY LAW ENFORCEMENT

Thank you very much, it is a real privilege to be here with you this afternoon and be able to spend a few minutes discussing some of the things relative to the highway situation in law enforcement. On behalf of Mr. Hathaway, we welcome the opportunity to share with you and in making some of these possible decisions and some of these things that will be of help both to you and to us as a state law enforcement agency. Col. Cochran, who was scheduled to be here this afternoon was called out of town unexpectedly for a very important meeting, so he asked if I would come and share some of these things with you. What I think we who are residents of Arizona will have to recognize is that there is an obvious need for adequate highway law enforcement and we feel that there are many aspects to this question that need to be covered. This afternoon as we think about them, I think that we would find that the Arizona Highway Enforcement problem is continually evolving and if we were to think back a few years as to what we had when Arizona first became a state, when roads were somewhat at a premium, there just weren't too many ways to get around this state. As the roadways have improved, traffic is increasing and with this thought in mind we can't help but think of some of the things that have gone on in former days.

We think back to some of the distinguished people from the Indian citizenry that have added to the betterment of law enforcement,

helping with this traffic problem to bring it to the place where we now have a workable relationship. I think the problem that seemingly presents itself today is the fact that we are just coming of age. Arizona is a new state really, in relation to the other states, and so some of the things that today we are experiencing, have already been experienced in other states. As a result many times we are fortunate, because we can look at their mistakes and we can see the good things that have happened to them, and in turn we can also see some of the pitfalls that others have fallen into and thus avoid.

With this evolvement we are finding that you as the Indian citizenry are really taking a hold of this problem and some real strides are being made. We can think of times when the problems Mr. Jones was talking about were really evident. When a highway patrolman would arrest a person on an Indian reservation, many times the individual was released because there wasn't the proper understanding and relationship that now exists. Of course we still have somewhat of a problem, but with the education of the Indian nation continually increasing, more and more of the people attending school, learning how to bring about the more modern phase of applying these things to their livelihood, and to their overall program. We find that today there is more and more mechanization and the Indian nation is just growing by leaps and bounds, as far as ways of doing things and ways of bringing about real cooperation with some of our state agencies. We further find that developing the educational area of the Indian nation that our Indian citizens are really developing their national resources.

These are quite naturally going to lead to traffic problems because the traffic is going to have to get in and get out. As Arizona is somewhat of a bridge state, we find that we have another situation in our state that brings about a problem. We as citizens of the State of Arizona are somewhat between a mass volume of traffic that moves back and forth across our country and this vast flow of traffic seemingly causes us a great deal of problems. Especially on some of our thru highways like U.S. 66, 60 and 70. Some people come into our state on one side and travel right on thru to the other side. We are about to enter into a program this coming summer where we hope we can cut down on our traffic deaths as people move across U.S. 66. I am sure most of you people have read about some of the things that are anticipated for these summer months. We are going to institute a check point on both sides of the state as people come in, we want to find out where they are going so that we might determine while they are in our state just what has happened to them. We have found that close to 43% of all of our deaths in this state involve people from out of state. This is almost half of our total death rate on the highways. We are setting up a program to localize these problems then put them in their proper category.

Today in the State of Arizona we have over 750,000 registered motor vehicles. This means that we have a lot of cars. This means that many garages have two cars in them. Many families will have a car or truck and maybe the young fellow that is going to school has a car because of the distances he has to cover. When we have some

750,000 traveling back and forth across our state, we can't help but have a problem. Vehicles, whenever they are out on the roadway traveling in opposite directions, sooner or later are going to bump into one of the other cars that is moving, and as a result we are going to have someone injured or perhaps even killed. We feel that this is probably the most serious aspect of our problem. We just have a lot of cars.

One of the things mentioned, is that we have a lot of transient travel. These people come in from out of state, they want to see the beauty of the reservations, they want to see all these things that the advertisement folder has told them about and as a result you people see a lot of these folks. They come into the reservations and stand around with their mouths open looking at all the beautiful things that some of these areas have to offer them. The same problem you have, we have, because they leave the state highway and go off onto county roads and off onto reservation roads. Then these people become your problem. I know you fellows have seen plenty of these tourists, pulled off along the side of the road out looking around, maybe going off for a walk somewhere, never knowing for sure just where they are. But these people that are your problems are certainly our problems too and the cooperation that we have had with the Indian police has been most heartening. We found that the fellows that have worked with us on the reservations as Indian policemen have been a real asset to the Arizona Highway Patrol, because many times we have situations that happen on a state highway off the reservation. The people that have fled onto the reservation to seek asylum, so to speak, and the only way that a state officer can possibly get the help that he needs is through an Indian policeman. We find that the Indian population in relation to the total population of the State of Arizona figures out to about 21% of the total population. We have about 67,000 Indian people living in our area on the reservations. We have about $1\frac{1}{2}$ million people who are otherwise situated throughout the state off these reservations. With the number of people that we have now, we really aren't particularly crowded, but we have nearly a 1,000 people a month coming into the State of Arizona taking up residency here and there. The injury and death rate we have because of the continued number of people that are coming in, increases the problem.

We also find that there are more specific things in relation to traffic offenses such as drunk driving. I know that you fellows who are here today, those of you especially who are in the arm of law enforcement, recognize and realize this serious problem of drunk driving. In our State of Arizona drunk driving accounts for better than 26% of the total number of people that are killed and injured in traffic accidents. When you stop to think that this is over a quarter of all of our deaths and accidents that are related to drinking drivers. One of the problems that we have in our state is that seemingly inadequate sentencing and holding of these individuals so that they can't go out and repeat this thing seems to be a real need. We find also that many times there are loopholes in laws that have long been existing and most certainly a person who is about to be brought into court is going to look for all the loopholes in the law that he can find.

DEPARTMENT OF
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ARIZONA

We have many laws that are a little antiquated. They have some age on them now and they are pretty dusty. One of the things that we feel really is needed is to up-date many of our traffic laws and make them a little more applicable to the living that we are doing today.

We find that in our state we are beginning to find a much better coverage in the field of communication. In the past the autonomy of the Indian nations has made it a little hard sometimes to get in and establish communication networks. In communications today we find there is a real network of radio contact throughout the state. I just checked this morning to find out how long before the work would be completed and within 30 days we hope to have our monitoring system complete. Tuba City being up there where it can reach out across the reservations will then be able to monitor much of the rest of the state and in turn the communications setup will be able to assist both you folks and us.

Another area is that of reporting. We have seen a great deal of improvement in the matter of reporting accidents, making these accident reports available so that we can find out how many people have been injured, how many are killed, and this cooperation has certainly been appreciated. As a result, I think that probably better reporting services are even yet to come, as we see the values that these things have brought about.

We feel that one of the major things that needs to be done is that we do improve our traffic code and become a little more uniform. We recognize that it is difficult for you folks to assume all of our laws without us coming along some of the way to assimilate some of these to you folks, so the thing that we are trying to do is to bring about a uniform traffic code law that will both benefit the Indian nation and also the Arizona Highway Patrol and other Arizona law enforcement agencies.

Thank you.

Mr. Cipriano Manuel, Papago Reservation Judge:

I would like to ask about the state code which authorizes revocation of a license which the Tribal Courts are not in power to do. What is the feeling of the department if the Tribal Court saw fit that this should take place. Would the department honor that?

Mr. Corcoran:

You see, this is one of the problems that we have. If we could find a uniform traffic code that the Indian nations could assimilate and accept then we would have a cross relationship, we would have a working relationship with this same code. For instance, the Navajo Reservation has accepted most of the traffic code with the exception of a few things that naturally would not apply. These folks naturally have this ability through the acceptance of this code. They can do these things. One of the things that we of course recognize is the fact that when the person is on the reservation we do not have any real jurisdiction, other than when they are on the state highway. The state highway system is picking

up more and more area, more highway, more is being dedicated. This jurisdiction in relation to Indians, that is given, is still somewhat relative to the Indian policeman. He is still the one that has to be contacted to make any authoritative arrest, even on a reservation highway. We would be more than happy to see to it that more of these licenses are withdrawn if the person is not driving as he should, but the jurisdiction here would lie mostly with the Indian Court.

Dan Martinez, Colorado River Reservation Chief of Police:

If a non-Indian and Indian have an accident on a highway going through the reservation, who decides whether it is cited through the deputy sheriff or through the Tribal court?

Mr. Corcoran:

On the reservation it is my understanding that any Indian would be cited through the Tribal court. Of course, this would also apply to the other person who was non-Indian. We have a cross jurisdiction here where the person who is non-Indian would be taken to the Justice of the Peace and we would have the Indian who in turn would be taken to the Tribal court.

Mr. Manuel:

Did you say that the State would recognize if the Tribal court revoked a license?

Mr. Corcoran:

In this case, I can't speak for the court itself nor for the Motor Vehicle Division but it seems to me that logically it would be that if the license was revoked by the Tribal Court and if the uniform traffic code was in effect that most certainly the person would be in violation of a like section that would be existing under the state system. With this person in violation if it called for a revocation of his driver's license it seems to me that it certainly should be recognized.

Mr. Eddy:

You are assuming then that every Indian Tribe has accepted this modified state code?

Mr. Corcoran:

No, I believe actually there is only a couple of instances where this has actually been done. There are some areas yet where we feel there would probably be some benefit in accepting a more uniform traffic code.

Mr. Eddy:

Well the answer you gave the previous gentlemen wouldn't apply except in certain cases?

Mr. Corcoran:

Where this uniform traffic code was in effect, the section would be similar. As it stands now the wording is quite different and perhaps the overall program would differ as far as the code itself. The penalty and the law would be different enough where you just couldn't put the two together to convict him in a Justice of the Peace Court for instance on the same charge.

Mr. Clifford Sorrells, Chief, Arizona Game & Fish Department:

FISH & GAME LAW ENFORCEMENT:

Mr. Chairman, Ladies and Gentlemen.

The problems which have been mentioned by other members of this panel have also been experienced by the Game and Fish Department. The department is not involved in enforcement of traffic laws but on some of the reservations, enforcement of game and fish laws is done both by tribal officers and game rangers. In instances I am aware of, the Game and Fish Department has enjoyed the cooperation of these tribal officers. Several Indian reservations have adopted tribal regulations patterned after the state code. Usually, this has been done by reservations who have allowed non-tribal members to hunt and fish on reservation lands. The non-Indian has been encouraged to come on this reservation and participate in the hunting, fishing and recreation.

The Game and Fish Department, recognizing this recreation potential, requested an opinion from the Attorney General in 1959 as to whether or not state regulations could require a reservation permit for the taking of wildlife. The Attorney General's opinion was in the affirmative thus the Arizona Game and Fish Department adopted an order in 1960 requiring that, in addition to a valid state license, a person taking wildlife on the San Carlos, Apache or Whiteriver Apache and Navajo Reservations must be in possession of a valid reservation permit for the specific area involved.

In the Attorney General's opinion the Arizona Game and Fish Commission is authorized to make rules and regulations and establish such services as it deems necessary to carry out the provisions and purposes of state statutes pertaining to game and fish and authorizes the commission to cooperate with federal agencies.

The Federal government by treaty and legislation as well as by regulations has given additional protection to certain migratory birds, including waterfowl.

The state is subject to the paramount powers of the Federal government in this field and it was, as I already stated, the opinion of the Attorney General that the Arizona Game and Fish Commission does have authority to require an Indian permit and it has been done on the three reservations which I also mentioned.

These three reservations have been most interested in wildlife and recreation and are providing hunting and fishing to non-Indians which

would not have been possible had it not been for the planning and foresight of the tribal council.

The tribes have experienced some violations and acts of vandalism by hunters and fishermen, but I think there are probably less violations of this nature occurring on the reservation than there is statewide. It was reported last year that an archery hunter killed a large white-faced bull on the San Carlos Reservation. Livestockmen, whether they be on or off the reservation, do not appreciate these acts of vandalism and expect the officers to apprehend and discourage the violators. As more and more people go into the field to enjoy the recreation of the out-of-doors, we have many reports of littering along the roads and at the camps.

Officers of the Game and Fish Department are available for the enforcement of all state laws and regulations and will assist the tribal officers wherever possible. Also, wherever possible, the state will be happy to assist in the management of wildlife on the reservation when requested.

Since my appointment to the Law and Order Advisory Committee, I have not been as active in this committee as I would have liked to be due to an accident last fall. I was off for two to three months and after my return to my regular duties with the Game and Fish Department, I have not had the time to devote to the committee but I would like to see the Game and Fish Department provide more information, training, and assistance to the tribes on any matter pertaining to wildlife and recreation.

I think it would be of benefit to the tribes and I know it would be of benefit to the people of Arizona to increase the hunting, fishing and recreation potential on the Indian reservations, particularly where there is a surplus of wildlife that should be harvested above the Indian's needs.

This provides revenue for the tribe from the fee charged to non-tribal persons. By proper game management a lot more people may be able to enjoy hunting on the reservations, and as has been done in many places, the fishing potential can be increased. The tribes are to be commended for the efforts they have given on their planning and programming in this field.

I think, Mr. Chairman, some of the audience may have questions which I have not touched upon and I would like to use my remaining time in answering any questions which they may have.

Vice-chairman Eddy:

Does anybody have any questions?

Luke Patch, Colorado River Reservation:

I have a question here I am interested in. If a non-Indian commits a violation on a reservation who gets the fine?

Mr. Sorrells:

If it is a violation of state game and fish laws or regulations and if the person is convicted in justice court, state law requires that the fine money be sent to the State Treasurer and placed in the Game and Fish Fund.

Mr. Patch:

You mean even if it's committed on the reservation?

Mr. Sorrells:

That is correct.

Mr. Pat Nelson, Navajo Police Chief:

What is the maximum penalty for fishing and hunting on the reservations without a permit? Do you give a citation?

Mr. Sorrells:

The violation would be classified as a misdemeanor punishable by a maximum fine of \$300 and/or 6 months in jail. Officers of the Game and Fish Department are authorized to issue citations for this violation. Many of the tribal officers on the three reservations which were mentioned also have state authority and can issue citations on this violation. Arizona Game and Fish Commission Order T-21 states as follows: "No person, except as provided by Title 17 Z.F.S., or by Commission Order, shall take any wildlife in the San Carlos Indian Reservation (Management Unit 26), the Fort Apache-Whiteriver Indian Reservation (Management Unit 25) or the Navajo Indian Reservation (Management Unit 11) unless at the time of taking he has a valid reservation permit therefor on his person for the respective reservation involved and exhibits same upon request for inspection to any authorized officer."

Vice-chairman Eddy:

Anybody else have any questions? If not, I'll ask one. You mentioned that Indian police who are deputized can carry out fish and game law enforcement on reservations. The question here in my mind is to whether he is operating within his jurisdiction as a tribal police. What law is he enforcing? The reason I ask that question is because we expect our police or game wardens to check on permits only. He doesn't check on what you call limits. I don't think he has anything to do with it because there are no ordinances in our constitution to take care of it so all he would have to do is check and see if they have a registration. Checking the limits is the job of the state officer.

Mr. Sorrells:

In the enforcement of the state regulations, the tribal officer is operating under state authority. Under such state authority, he may check state licenses, limits and reservation permits. In other words, he has the same authority as a state game ranger in the enforcement

of state law. The regulation requiring a reservation permit was passed for the benefit of the tribes in carrying out their wildlife program.

Violators can be cited in and disposition made in state justice court.

Mr. Eddy:

I see your point, but it seems to me as if it's kind of sneaky way of trying to force the law on reservations. If the Game Department can do it, how can we keep the others from doing it?

Mr. Sorrells:

I am not sure that I understand your statement but I assure you that the regulations which we have discussed were passed by the Arizona Game and Fish Commission with only one thing in mind and that was to assist the tribes in their wildlife programs. Regulations can be enforced on non-Indians who were hunting or fishing on the reservation.

Mr. Robert L. Bouvea, District Supervisor, Arizona Department of Welfare:

PROBLEMS FACED BY WELFARE IN RELATION TO LAW & ORDER ON RESERVATIONS

Mr. Gritzner, members of the Law and Order Advisory Committee and members of the Tribal Leaders Advisory Committee, I am happy to say, I see a member of our better halves with us, ladies, it is my pleasure to have this opportunity to talk with you about some of our welfare problems. I cannot begin to cover them all in our limited time here relative to our public welfare efforts in working with our Indian citizens.

In the past decade, we have made numerous strides forward and an substantial amount of progress; however, we are far from the happiest solution to the problems that still confront us as the two speakers before me both Mr. Corcoran and Mr. Sorrells have noted--that which all departments face in the problem of jurisdiction in relation to where the locus of the offense occur, as we often refer to it, and that same problem confronts us in welfare, essentially, in the area of attempting to reach out and put our fingers on the deserting father of children.

We have a federal act called The Uniform Reciprocal Enforcement Non-Support Law, which, when that same type of problem comes up for a non-Indian and we find him in California or Nevada, or wherever, we can complete the file and submit it to the jurisdiction wherever he is and it will hear him and sentence him accordingly. We have not so simple a situation when it relates to reservation desertions. I can think of one county, for instance, in which we have a little over 500 Indian dependent children cases and of that number a little less than half are due to desertions and or divorces and of that large number we have only a hand full in which child support is being received. This, of course, directly relates to the extent to which the Tribal courts and find and hold defendants responsible as well as assessing their ability to do something about meeting their obligation. In the little over 500 cases I mentioned, there were just slightly over 200 instances in which non-support complaints were filed or attempts made by the plaintiff to file, but either there was no action taken by the court or no support was ordered in the hearing as it developed.

Too often, in what we sometimes refer to as the matriarchal society, the man is relieved of his obligations by court. I am giving you, just generally, interpretations of court orders from extensive review of them. The fact that the defendant has assumed obligations for another family group is often construed by Tribal courts to mean he has no further obligation.

Not too infrequently, the judge will dismiss the petition and add, in his conclusion of the hearing in his order, that it is the wife's remedy to seek support elsewhere or direct in the order that she go to the Welfare Department. Presumably, this ends the man's obligation or, in other instances, defendant has been ordered to pay a flat sum. For obvious reasons, there is a request by the women for a re-hearing in response to which the court will order a final settlement. Now, here are small children who have many years left of their minority in which the court has vacated the \$25 or \$30 a month support in favor of a final settlement, for say, 5 head of stock, whether cattle or sheep, and that is the end of it. Defendant has discharged his responsibilities and the department or somebody is faced with a possible maximum of 18 years responsibility to care for these children.

It seems to me that there is a serious lack of importance attached to these non-support complaints on the part of the court, or in some instances to the follow-up and the actual evaluation of the ability of such deserting fathers to provide support. In this connection, the problem becomes complicated for Law and Order where the deserting father moves from reservation to reservation. This has been one for which we don't have a good answer. In some instances, there is cooperation where, say, the reservations are adjacent. The authorities cooperate and we have no problem. However, as the deserter moves from reservation to reservation the question arises as to who has the responsibility and who then will initiate contacts.

In the matter of child neglect, there is a serious problem both on and off the reservations. I don't single out the reservations in this connection solely, because this is a universal problem off the reservation equally, but for the portion that does apply to the reservation case-loads, there is need for more cooperation as I see it for both short and long range planning in child care when, say, the parents are in jail. Cooperation between the Bureau of Indian Affairs and the tribe as well as us for plans which really have at heart what is good and what and who is going to protect and serve the interest of the children. Too often, the court will, if the parents have been heard before the court and it is deemed a problem of abuse, neglect and etc., the children will be ordered into the custody of other relatives, possibly grandparents, and some of these situations are really no better in assuring the child's protection than the situation from which the children were removed in the first place.

In a matter of a non-Indian situation where we find what we call a stable non legal relationship of common law, we hold that man responsible for the needs of that household and if his wife were an applicant we would most likely reject it. As I indicated earlier, in some instances tribal action seems possibly by custom to take a different look at this matter. All of the Department's policy and regulation stem from the

basic title of the social security act and our parallel state statutes. We are required to apply them and attempt to enforce them equitably in all political subdivisions of the state and, if you break that down in connection with your separate jurisdiction and nation within nation exemption from these statutes, it does present us some difficult problems.

We still have progress to make. For instance, in some areas over a period of time we had great difficulty with court orders sentencing a man for whatever the violation for say 90 days or maybe 120 days. The family is referred to us and we would pick them up on our assistance rolls only to find a week or two weeks later, no advice to us or to our local agents, that the man has been released and returned to the home. All of which represents a situation we are required to look at which, under our regulations, would make for ineligible assistance having been rendered this family following the man's release. This problem has improved in some areas and continues to be still a problem in others.

In the matter of paternity where it is a matter of obvious common knowledge that this man is the father of this women's six children, the court order will read no evidence has been presented to this court that this man is in any way responsible, besides, he now has another family. The court orders the petition dismissed. We try to apply these programs and all of the considerations involved in them equitably regardless of whether we are treating with Indian citizens or non-Indians. You can see, therefore, we are constantly being faced with contradiction and conflict here.

Another point which I would view as somewhat of a contradiction to our federal and state regulations. We require that a women file a complaint for non-support. I find more recently an additional obstacle is placed on Aid to Dependent Children applicants in which as a prior consideration to accepting a hearing on this man for a matter of non-support and the complaint around it, the court requires a pre-hearing for which they want a fee of maybe \$5 or \$10, depending on the reservation area, in which to determine that there was lawful weddedness in the relationship between this man and this women before they will give a hearing on non-support. Obviously, you can't hear on non-support unless you have the matter of paternity acknowledged and established in relation to some individual. Interposing a prior hearing at added cost to the welfare applicant in this connection appears to me to constitute a delay and in fact some Tribal courts have returned the non-support complaint and won't hear on it. If the woman comes up without the fee and is refused a hearing, the whole situation of hardship and so forth gets into the act. Well I could go into many other areas, but I don't want to take too much time. If there are any questions I will be happy to try to answer them.

One thing that occurs to me. When we encounter ineligible assistance and an over-payment we have a remedy at least to have the matter heard, possibly to the point of prosecution and to even to attaching assets that may be available that may be had not been identified before but have now come to light as a part and as a means of security for some

repayment of the funds that had gone out illegally. We have no such basis on the reservation. I don't know, in instances of the tribes who have substantial tribal funds, whether the tribe feels it has any sense of conscience for its members and would consider whether it shouldn't accept some responsibility in this regard if the individual or recipient is unable to be heard or secure action on her own behalf.

Mr. Nathan Seldin, Assistant Area Social Worker, B.I.A.

We are very concerned about the matter of a uniform court action.

Mr. Bouvea:

Equally, as Mr. Corcoran mentioned in regard to a uniform compact from his point of concern, reminds me of something that I wanted to add. That is, wondering whether a possible answer would involve a review of the federal relationship. Whether the United States District Court could in any way correlate and possibly supervise the workings of the Tribal courts and, in so doing, identify and define some of the conditions that would result in cooperation and uniform agreement instead of blank walls and obstacles that are met now.

Mr. Seldin:

I don't know if there is any particular court that would address themselves in the matter of welfare, whether the state administers it or not.

Mr. Bouvea:

I don't know, but I'm not aware that they have. I don't know of any reason essentially and basically why they could not. It requires motivation and desire, of course.

Mr. Seldin:

It is the practice of the State of Arizona for Indian women who have to get finger printed before they can relinquish their child for adoption and this is one of the things the B.I.A. is concerned about.

Mr. Bouvea:

Well, you are going to have a meeting I think June 19th at your Area Office at which probably some of this policy will come forth.

Mr. Pete Homer, Chairman, Colorado River Reservation, Tribal Council:

What do you require for eligibles?

Mr. Bouvea:

Well, it depends on what program we are talking about. If it is an elderly man or an elderly women or the man and wife both, obviously, enrollment in the census usually takes care of their residency and their citizenship on the census rolls to prove that and also their

age in the instance of the elderly age 65 or over. As I said, the matter of residence and citizenship is almost automatic. There remains only, then, the matter of their assets and income as to whether they are below certain maximum limits which they cannot exceed and acquire eligibility, and income sufficient or insufficient meet the computed living expenses under the Department's standards.

Mr. Nelson:

The suggestion here is that you are critical of the court.

Mr. Bouvea:

I wasn't critical. I didn't mean to pose it in that sense.

Mr. Nelson:

You mentioned about the family and jail and then they apply for assistance.

Mr. Bouvea:

Yes, I think the answer to that has probably been worked out in some reservation areas.

Mr. Nelson:

When a family comes in and asks for assistance if the man is in jail.

Mr. Bouvea:

We had gone through that earlier but we will continue to work cooperatively.

Mr. Manuel:

It seems as if the matters pertaining to highway problems like they are authorizing the State Highway Commission with permission of the legislature and the Governor to enter into an agreement with the tribal council it seems that this would also be possible with this matter of welfare. Not necessarily that it be referred to the U. S. District Court as mentioned, I can see why they would be empowered to make an arrest on the reservations and also vis versa and when it comes to the problem of the human being this is very limited there would be no tools to work with available so this agreement that they are now proposing on highways I would think that this should be approached and possibly have something developed similar to that.

Mr. Bouvea:

Yes what you are saying in other words, in effect is, that you feel that we could accomplish some degree of cooperation and better understanding through administrative regulations and tribal code statements so that the welfare department would not need to report to the suggestion of the U. S. District Court. Yes, I think that's a good point, it bears further consideration.

Mr. Nelson:

Must mothers file complaints on desertion? Is there no aid whether a formal complaint is file or not?

Mr. Bouvea:

I said that of that number on the rolls as mentioned earlier, there are other reasons of course which are the cause of deprivation other than desertion, but of that number, there were 203 in which desertion was involved and in which the complaints had to be filed. Yes, you are correct it is a condition of receipt of aid if deserter's whereabouts are known. In some areas a further requirement has been introduced in some of the tribal courts in which they were requesting a prior hearing on the matter of the lawful state of weddedness of the women who was the plaintiff and who was filing for support and if she did not have the \$5 or \$10 fee for that prior hearing the courts have returned the non-support complaint, refusing to accept it. This needs to be clarified so as not to cause undue delay or hardship to the applicant in processing her application.

Mr. Grant Magleby, Area Criminal Investigation, Bureau of Indian Affairs:

NEED FOR CLEARER UNDERSTANDING OF TRIBAL LAWS AND ENFORCEMENT

Chairman, there is probably no other governmental function where there is closer cooperation than in law and order by that I mean the State, County, Federal and Tribal Law and Order agencies. All law enforcement agencies have many things in common. First, it is their desire to prevent crime, then they are charged with keeping the peace and maintaining law and order. If they are going to cooperate and work together, and they really do in this state, then it is necessary to have an understanding of tribal authority and to know something about the lines of jurisdiction.

I have heard people say that they thought the federal government had jurisdiction over the Indians because Indians were wards of the government. I have heard others say that Indian tribes had jurisdiction conferred upon them by the federal government. These two statements are as erroneous as many others that you may have heard. So first I would like to sort of lay a legal background on the authority and jurisdiction of an Indian tribe and to do it quickly first, I would like to refer to a Supreme Court Decision. Chief Justice Marshall phrased it this way: "The Indian nations had always been considered as distinct independent political communities, retaining their original natural rights...The very term 'nation,' so generally applied to them, means a 'people distinct from others.' The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties." (Worcester v. The State of Georgia, 6 Pet. 515, 559.)

The Supreme Court has reiterated this position in other cases. The Court said in *Kagama v. United States*, 118 U.S. 375:

"With the Indians themselves these relations are equally difficult to define. They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union, or of the State within whose limits they resided."

The Tenth Circuit Court of Appeals has held that tribes are not states,

"They have a status higher than that of states. They are subordinate and dependent nations possessed of all powers as such only to extent that they have expressly been required to surrender them by the superior sovereign, the United States." (Native American Church v. Navajo Tribe, 272 Fed. 2d 131.)

An Indian tribe has many of the attributes of a sovereign nation and has the power and the right to enact laws to govern its people and to punish the truant members, except where there are limitations placed on the tribe by the superior power, the United States Government.

Now, once upon a time, the government said that the tribes do not have the facilities to deal with its members when they commit the more serious offenses and so Congress gave the federal courts jurisdiction over five major crimes; later on, they added two making it seven; then ten and for a long time they referred to the ten major crimes. Then they added one more - they made it an offense for an Indian to embezzle tribal funds or other tribal property, and so an Indian on an Indian reservation is subject to either the jurisdiction of the federal court or the jurisdiction of the tribal court and tribal codes enumerate the offenses in the law and order code which they have enacted. If any of the offenses are committed within the exterior boundary of the reservation, the tribal court has jurisdiction and that has been brought out here. That includes state highways running across Indian reservations and has also been explained. In most cases when an Indian is apprehended, either by a deputy sheriff or a highway patrolman, the proper procedure is to cite them into tribal court. Now, if an Indian leaves a reservation, he is under the jurisdiction of the State. In the past some people have had a hard time to understand this.

Many tribal law enforcement agencies often receive calls from other law enforcement headquarters saying that we have a certain Indian here who is causing us some trouble; will you come and get him? Well, it would be just as reasonable for the chief of police of Tucson to call the chief of police of Phoenix and say that we have a citizen from Phoenix down here causing us trouble, will you come get him? When Indians appear in State court they don't expect any special privileges; they only expect to be treated no better or no worse than anyone else. I have heard some Indians complain that they have been in with groups in the cities and some of the groups would be drunk and instead of arresting the drunks, they would arrest them all and take them in. These cases I believe are very few. I have heard some state judges say that they like Indian people; they have a deep sympathy for them and they are inclined to be lenient with them. Generally if an Indian

is a loser he is a good loser, he doesn't wish to have any special privileges; he just wishes to be treated like anyone else.

One time we were having trouble on a certain reservation but with non-Indians and so we referred the matter to the deputy sheriff and this happened to be a new officer and he said, "No, I won't come over there, I have no jurisdiction." On an Indian reservation I believe such false ideas are fast fading away. If a non-Indian on a reservation commits an offense against an Indian, the federal courts have jurisdiction. If a non-Indian commits an offense against a non-Indian, the state has jurisdiction. The state has the responsibility over non-Indians, as indicated. Not long ago I was on a reservation where a group of non-Indian juveniles were drinking beer on a Saturday night and generally causing a disturbance. There weren't any deputy sheriffs there to enforce the law against them so the Indians wondered if we have a double standard of law on the reservation. The minute an Indian is disorderly the Indian police arrest him, when non-Indians are disorderly they are not arrested so quickly. The proper procedure is for them to be brought and processed through state courts.

We talked a little here about hunting and fishing I might remind you that a couple of years ago Congress enacted a law that made it a federal offense for a non-Indian to hunt and fish on an Indian reservation without a tribal permit. We have made an effort to explain this to Indian people but we tell them that the law says who ever willfully hunts and fishes without a tribal permit is in violation of a federal law. That doesn't mean that if a man is near the border of a reservation and accidentally strays on the reservation and doesn't know it, that he should be immediately arrested and taken into federal court because in the terms of law and order that would not be a good case.

Some people are confused on the law of extradition. An Indian reservation is not a State and it is not a territory, therefore, it does not have the same rights of extradition that the states have. If an Indian commits an offense on the reservation and then leaves, the Tribe does not have the power to extradite the Indian back onto the reservation to be prosecuted. There is need for legislation on this particular point. Because the reverse is not quite true, if a Indian commits an offense off the reservation and then goes onto the reservation, there are means whereby the state can obtain the Indian and then prosecute him in State court. There has been some misunderstanding on this in the past. Some law enforcement agencies have immediately known of such a situation when it arises calls the tribal police and say that such and such an Indian has committed an offense in our county, we have a warrant for him and we want you to arrest this Indian and turn him over to us. Most of the tribal codes have a provision that tribal courts can turn a fleeing Indian over to the state courts for prosecution.

I just have a few minutes left and I would like to enlarge a little bit on what has been said about the Uniform Enforcement of Non-Support Act. I have talked to several county attorneys and they have told me that if an Indian who is in violation of non-support leaves the reservation and then leaves the state that his wife could come into the county court before the county attorney and under the provisions of the Uniform

portion of the Non-Support Act this county attorney would prepare the proper papers for the proper court for transmittal to the court in the state in which the Indian has fled so he could be brought before that court to be dealt with under the provisions of this law. It has been mentioned that if one Indian flees from one reservation to another the reservations not being contiguous, there is a question as to how are we going to get this Indian back to the reservation from where he has fled. There is need for legislation on that particular point and Mr. Truswell, the Field Solicitor, a couple of years ago provided an ordinance, or rather a rough draft of an ordinance, following the provisions of the Uniform portion of the Non-Support Act and suggested that the tribes might consider it. If each tribe enacted it, they would have the legal provisions to deal with fleeing fathers just the same as they do under state laws. Yes, thank you very much.

Vice-chairman Eddy:

Does anybody have any questions in regard to tribal law?

Mr. Royal Marks, Attorney:

Mr. Chairman, and members, I would like to ask the question, would it be possible I don't know, which state or federal legislation, but it appears to me that it is impossible for the State to have legislation to provide in the event an Indian is being charged with a crime on an Indian reservation of that Indian going into safekeeping. Could there be legislation passed so a state officer or deputy sheriff could take that Indian to the border of the reservation and turn him over to the tribal police, I believe that might be the answer.

Mr. Magleby:

Sounds like it would.

Mr. Martinez:

Would they have any right as finance officers to pick up an Indian's car if he had parked it on the reservation, in the town of Parker, which is on the reservation?

Mr. Magleby:

Now I am assuming that you are talking about a car that has been sold under a conditional sales contract and the payments have lapsed and so they seize the car. Is that what you mean?

Mr. Martinez:

An Indian boy had a car and the finance company said they would come after it because his payments were delinquent. They found it at Parker on the reservation and seized it. Did they have the right to pick up this car?

Mr. Magleby:

Well since you are in law enforcement, I will answer it from the law enforcement officer's duties. The only duty of a law enforcement

officer in connection with seizure of an automobile on a conditional sales contract, where it has not been made or any other reason where it has not been paid where payment is due, that is if there is any disorder in connection with the seizure then the law enforcement officer is involved in order to prevent or stop or take whatever action is necessary in connection with the disorder.

Mr. Martinez:

Do they have any right to take that car?

Mr. Magleby:

Well, there is an attorney right down there.

Mr. Marks:

I think the question he is raising is something about a petroleum company that didn't come pick up its oil in time and the oil disappeared. If it is under legal process, in other words, if the writ of execution has been issued by the State Court the deputy sheriff is within his rights, within my estimation, of picking that car up within the city limits of Parker because there is concurrent jurisdiction to begin with and I don't believe that has ever been decided by the U. S. Supreme Court as yet. Now is the question whether the city of Parker is within the exterior boundary to the reservation. Here again in my opinion the Williams vs. Lee case did not decide this point as to whether or not there is a concurrent jurisdiction by the State of Arizona on Indian reservations in process and in my opinion there is concurrent jurisdiction. This is a question that has not been decided.

Senator Robert E. Morrow - Mohave County:

VOTING AS PERTAINS TO RESERVATIONS

Mr. Chairman of the Commission, Members, Ladies and Gentlemen.

Only a few years ago, so far as the Federal Government was concerned, Indians living upon Indian reservations were declared not under guardianship for purposes of voting; at such time as the States by law, should enfranchise them.

Arizona quickly complied by a referred measure passed by the people. In this short period of around ten years, many of the Indian citizens upon most of the reservations are registering and voting at state elections.

The State of Arizona takes the attitude that suffrage is the most basic of civil rights. That all citizens qualified to do so, may equally express their freedom of choice upon measures or candidates, to be voted upon and that any qualified elector may run for public office and hold that office if elected.

The State recognizes the sovereign rights of the tribes over their own reservations; and their sole authority over their own tribal elections in any manner they may elect. It recognizes that some tribes will not want to now participate with the State in state elections, and some are not doing so. This is their privilege.

However, by common understanding between the State and those tribes which are participating, it is recognized that the election laws and procedures necessary for carrying this out, must be uniform throughout the whole State. No county or portion of the State can digress from them and hold a legal election. I am informed that some Indian tribes through their councils have adopted the suffrage and election laws of the State, by tribal ordinance.

We have been getting along very well, with the exception of a few instances, and it speaks well for a people unaccustomed as they have been with our election laws; that they are, in increasing numbers, willing and able to take an active part in the affairs of State Government.

Our State election laws are not framed in a manner which might exclude any section, any race, or color. The same qualifications of an elector apply to all alike namely:

1. Must be a citizen of the United States.
2. Have lived in Arizona one year previous to an election.
3. Be registered as provided by law.
4. Over the age of 21 years, both male and female.
5. Be able to read the Constitution without prompting.
6. Must never have been convicted of a felony without the restoration of civil rights.

S.C.M. 3, which was passed and signed in the recent session, recognizes the sovereign status of the reservations; that co-operation by the tribes and State is necessary for the orderly carrying on of the election processes under Arizona law. That the establishment of voting districts and polling places should be such as to serve all the people upon a reservation. That members of the election board shall consist of qualified electors of the district and be recommended by the party committeemen, if desired in each voting precinct as provided by State law, to the Boards of Supervisors.

It provides that whenever there are areas of uncertainty, that the Secretary of State in behalf of Arizona, is qualified to explain the laws and their purposes and requirements to the Tribal Council.

I foresee the day when the voters upon Indian reservations will take an equal interest with the other portions of the State in voting and in the holding of offices which accompanies it.

It is better to work out misunderstanding of laws in advance so as to eliminate misinterpretations. Within a few years, I am confident the Indians will want to participate and will do so and our State will be benefited by this participation. I will endeavor to answer any questions.

Dr. Roessel:

I am from the State University and I would like to ask Senator Morrow a question. Sometimes you hear it said that the requirement for our State concerning reading, works to a disadvantage for Indians. What do you think on this subject?

Senator Morrow:

It is a State's right to prescribe the qualifications of electors and there is considerable difference in State laws in this respect. In our State, the requirement is that an eligible voter must be able to read the Constitution without prompting. Some States only require the elector to sign his name. Some States allow voting at the age of 18 years; others require 21 years in order to vote. Some have poll taxes while others do not. At present the Supreme Court of the United States has before it the literacy requirement for voting and may hand down a decision in that regard which States must follow. We have believed that a person who can not read is incapable of comprehension regarding affairs of State. We are watching for the Court's decision regarding the question and may have to alter our position.

Vice-chairman Eddy:

Senator Morrow has to be excused so if there are no further questions we will thank the Senator for coming this afternoon.

Mr. James E. Goodhue, Staff Attorney, Office of the Solicitor, U. S. Department of the Interior, Los Angeles:

WATER RIGHTS

Mr. Chairman, Members of the Commission, Ladies and Gentlemen.

At the outset, I would like to state that the Solicitor's Office is pleased to have been invited to participate at this meeting. Speaking for myself, I want to add that I am also pleased since a good deal of my work is concerned with water right matters arising in this State, particularly in connection with differences which develop between Indian users on one hand and non-Indian users and State agencies on the other.

I think that many of these problems develop because of a lack of understanding of the origin and extent of the rights of the Indian tribes to the use of both surface and underground waters found on their reservations. I believe that perhaps much of the lack of understanding may be attributable to the fact that non-Indian users and State agencies are primarily concerned with State laws, which provide for the acquisition and regulation of water rights, without a full realization that the rights of the Indians derive from Federal law. With this thought in mind, I would like to review the nature of the Indians' rights.

In dealing first with surface waters, the cornerstone of these rights is found in the doctrine of implied reservation of waters, which was enunciated by the United States Supreme Court in 1908 in the case of *Winters v. United States*. Since the decision, the Indians' water rights have commonly been referred to as being based on the so-called "Winters Doctrine." The court in its decision implied a reservation of water rights sufficient for the development of an agricultural economy within the reduced area of a treaty reservation. Briefly, the facts upon which the decision was based indicated that the reservation was a part of a much larger tract which the Indians had occupied in the past when they followed their nomadic way of life. It was the policy of the government and the desire of the Indians to change those habits. A treaty was entered into which created a reservation for the Indians comprising a reduced area of their original holdings. Subsequently, non-Indian settlers appropriated waters under State law from the same sources used by the Indians but upstream from the Indians' diversion points. As time went on, the settlers began to encroach upon the waters which had been used by the Indians for agricultural and domestic purposes. A law suit was then filed in which the United States sought to enjoin the upstream diverters from cutting off the supply of water needed for the irrigation of the Indian lands. In the suit, the United States requested water for some 30,000 irrigable acres, however, the Court only allowed sufficient water for 5,000 acres, which the evidence showed was the amount of land that the Indians were then irrigating. Because the treaty did not mention water rights, which might have formed the basis of an express reservation, the Court applied an equitable doctrine of implied reservation since, in looking at the history of the treaty and the intent of the parties, the Court did not think it the intention of the United States to take from the Indians the means of sustaining themselves, the Court based its decision on the cases of *United States v. Winans*, and *United States v. Rio Grande Dam and Irrigation Company*. In this latter case the United States Supreme Court held that in the absence of specific authority from Congress a State could not by its legislation destroy the right of the United States as the owner of lands bordering on a stream to the continued flow of its waters, so far at least as may be necessary for the beneficial uses of the government property. The *Winters* case, then, decided both the intent and power to reserve water for Indian use. Perhaps I have oversimplified the facts, but one point I want to stress is that the extent of the rights was primarily based upon the needs of the Indians. In applying the *Winters* Doctrine in following cases, other courts have been faced with the problem of measuring what the needs of the Indians might be. In doing so they have oftentimes reached varying results. For example, in one case the court held that the water rights reserved for the Indians' use was sufficient to cultivate the whole of their lands so reserved. In another case, the court granted the Indians sufficient water to irrigate the lands then being irrigated with the right to apply for a modification of the decree at any time it was determined that their needs would be in excess of that amount. In still another case, the area of irrigable lands included in the reservation was not considered the criterion for measuring the amount of water reserved, but the extent of the right was predicated upon the needs of the number of Indians living on the reservation as demonstrated by experience. In yet another case, the extent of the implied reservation was determined to be a sufficient amount of water to

irrigate the lands which could be served by the irrigation project constructed by the government. In this latter case, it would seem that the court looked to Congress for a determination of the extent of the reserved rights.

Recently, as most of you know, the case of Arizona v. California was taken under submission by the United States Supreme Court following a long trail and briefings and oral arguments by the various parties involved. As most of you are also aware, the water rights of all Indian reservations located within the lower Colorado River Basin, were put in issue. The special master who heard the case included in his report and recommended decree the rights of the five reservations using mainstream waters below Lake Mead. As to the Indian reservations using tributary waters within Arizona, the special master did not consider their rights were involved in any controversy which needed to be decided in the case and therefore made no express findings in his report and recommended decree. Essentially, the special master based the Indians' rights upon the doctrine of the Winters case. Various parties took issue with the special master's findings of fact and conclusions of law and raised a number of objections which have never been ruled upon by the Supreme Court. Those raised by the State of Arizona included (1) Whether, after the admission to statehood of Arizona, the United States had the power to reserve water from the Colorado River, a navigable stream, for use on Indian reservations, (2) Whether, prior to the admission of Arizona to statehood, a reservation of water from the Colorado River for use on Indian reservations located within the territory of Arizona could be made without a clear manifestation of an intent to reserve such water, (3) Whether the power to reserve water for federal purposes could be exercised by the President without authorization by Congress, (4) Whether, assuming a reservation of water for Indian use had been made, the quantity of water reserved should be measured by the water needed to irrigate all of the potentially irrigable acreage within each reservation or by needs of the Indians, and (5) Whether, regardless of the existence or absence of a reservation of water for use on Indian reservations, the extent of Indian water rights should be determined by the application of the principles of equitable apportionment. The United States contended for the application of the Winters Doctrine and placed complete reliance thereon, but in addition raised a new contention which, if upheld, might materially affect the determination of Indian rights in the future.

Briefly, this contention is based upon the fact that since the times of their cession by Mexico in either 1848 or 1853, as the case may be, public lands included within the area with which the case of Arizona v. California was concerned have been owned by the United States; that ownership of the lands carried with it the ownership of the right to use the waters which flowed on those lands; that control of the use and disposition of those lands and the right to use the waters thereon was vested exclusively in Congress and that no appropriation of those waters was permissible in the absence of congressional consent; that the only acts of Congress permitting appropriation by the public were the Desert Land Acts of 1866, 1870 and 1877; that, unless or until waters were appropriated under these acts, the ownership of the waters continued in the United States; and that when the United States withdrew or

reserved from the public domain lands for an Indian reservation, such withdrawal or reservation by the United States effectively also withdrew from appropriation under State law the water appurtenant to those lands which had not been effectively appropriated prior to the time of the withdrawal. In other words, the withdrawal or reservation would not initiate or create a water right upon which ownership is based, but that by the act of creating a reservation the unappropriated waters on the lands were set apart for the purposes of the reservation and insulated against subsequent appropriation by others. Following this line of reasoning, the United States contended that it would not be necessary to find an intent, either express or implied, to reserve water for irrigation or other purposes as of the time of the creation of an Indian reservation, but that the act of withdrawal of the lands from the public domain insulated the unappropriated waters upon the withdrawn lands against subsequent appropriation in accordance with local laws and customs. Now, I have not mentioned these new contentions made by either the State of Arizona or the United States for the purpose of attempting to resolve them here—that is the job of the Supreme Court. But I have mentioned them for the purpose of demonstrating that, in its present posture, the case of Arizona v. California may be the vehicle for establishing further and more explicit guidelines by which the rights of the Indians may be judged, for we have found that most disputes involving Indians and non-Indians result from indefinite guidelines by which the rights of the Indians can be measured.

Now, in all cases heretofore applying the doctrine of the Winters case, it is to be noted that the Courts were concerned primarily with agricultural pursuits of the Indians. In recent years, however, the Indians have developed other uses of water which have become of equal importance in many areas. These new uses, not related to agricultural, have caused new conflicts with both non-Indian users and State agencies. Perhaps, however, a decision handed down a few years ago by the United States Supreme Court might prove to be the basis which the courts in the future will employ to decide rights to use water for purposes other than agriculture. This case, entitled Federal Power Commission v. The State of Oregon, drew the distinction between waters flowing on the public lands of the United States and waters flowing within the reserved lands of the United States. Theretofore the states considered that by virtue of the so-called Desert Land Act of 1877, which I mentioned a few minutes ago, they had acquired jurisdiction over all waters within their boundaries. In this case the Supreme Court held that the States' jurisdiction (and therefore their right to legislate concerning appropriation of waters within their borders) was limited to waters flowing upon the public lands and could not be construed as including control over waters upon reserved lands. The particular reserved lands involved in this case were partially within an Indian reservation and partially within a power site withdrawal. If, in the future, the courts apply this doctrine to Indian reservations in general, some disputes between Indian and non-Indian users may be avoided.

So far I have only mentioned surface rights. Of equal importance to the Indians' economy and way of life is the use of underground waters.

In recent years, as the water table has dropped drastically in many parts of Arizona, disputes have arisen over the unrestricted drilling of wells and pumping of underground water by the Indians. In this connection, the Department of the Interior a number of years ago took the position that State laws could not be applied to the regulation of the withdrawal of underground waters on Indian reservations in Arizona. Now under the law of the State of Arizona, as I understand it, underground waters are presumed percolating in nature and the property of the overlying owner. He may use such water freely and without limitation, without liability to an adjoining user, providing his use of the water is for the purpose of putting the land from which the water is taken to a reasonable beneficial use. He may also convey the waters to other premises than those on which they are originally found, providing that no other rights are injured thereby.

The legislature of the State of Arizona, under its police power, has put few limitations upon exercise of these rights. In fact, about the only meaningful restriction on the use of such waters, found in the Groundwater Code, prohibits the issuance of a permit to drill a well within so-called critical groundwater areas for the irrigation of lands which were not irrigated in 1948 or which had not been cultivated within five years prior to 1948. The United States also has taken the position that as the owner of the lands it also owns the underlying waters, but it contends that the police regulations of the State do not apply to the United States in the exercise of the right to use the water. In a recent case in Arizona jurisdiction, the United States was involved in a case specifically designed to test the applicability of State law to underground waters on reserved lands of the United States. In the United States District Court it was held that State law was not applicable to the use of underground waters on these reserved lands. We had hoped that when the case was appealed to the United States Court of Appeals for the ninth circuit, that a decision would be rendered which passed upon this point and would therefore be of value in measuring the rights of the United States to use underground waters in other jurisdictions. However, the Court of Appeals, in affirming the District Court, did not reach the point which we had hoped would be adjudicated, so at this time we do not have any definitive case law decisively measuring the rights of the Indians to the use of underground waters on reservation lands.

In conclusion, I would like to add that it must be recognized that the courts are always the final arbiters in deciding the extent of the water rights of all users, but until the courts have finally decided a sufficient number of cases which can be used as guidelines for the measurement of the Indians' rights, it is to be expected that disputes will arise from time to time between Indian and non-Indian users. In the meantime, I believe many of these disputes can be settled without recourse to the courts through the exercise of an enlightened judgment by all parties, and particularly through cooperation with such State agencies as the Arizona Commission of Indian Affairs. Through the investigative efforts of this Commission, I am sure that much progress can be made which ultimately will inure to the benefit of the Indian as well as other water users in the State of Arizona. Thank you.

Mr. Jay Morago:

Was the Gila decree entered into the Arizona vs. California controversy as evidence?

Mr. Goodhue:

Yes, this document, the Gila River decree was entered into evidence as an Arizona exhibit. The United States didn't enter it because it was already in evidence. It was not necessary to do so, although in the presentation of the water rights for the Gila River Indian Reservation as well as the other lands included within the decree, those rights asserted by the United States were supplemented by additional evidence. The decree itself is entered in evidence. It was a stipulated decree.

Mr. Edison Evans, Chairman Advisory Board, Gila River Reservation:

I was wondering about the question of California versus Arizona and how the Gila River decree was mentioned since we Indians had nothing to do with the Gila River decree. The records will show that the Gila Indians were barred from entering the court room when the Gila River decree was heard in Tucson. The Justice Department was supposed to protect their water rights. On top of that, we have lost lots of our water rights. We, the first Americans, have lost our water rights. Who will be responsible in the California versus Arizona controversy when it pertains to our water rights? How can we be assured who is going to represent us to protect our water rights?

Mr. Goodhue:

Of course, your water rights are part of the land and the lands are held in trust for the benefit of the Indians by the United States; therefore, the United States is the party to represent your interests. Now, I don't know anything about your problem down in Tucson although the United States did represent the interest in that case whether they were right or wrong at that time, I think you are presently litigating a case before the Indian Claims Commission, but in Arizona vs. California, while the rights of all reservations were put in the issue because that was the nature of the case which was pleaded, the interior reservations using tributary water were not dealt with by the special master in his decision and recommended decree. He had a special clause in his recommended decree which says that, in effect, no rights of Indian reservations not dealt with in his report are affected by his decision or recommended decree, and the Gila River rights are not one of those reservations which he dealt with. The only reservations which he found with water rights were those using main stream waters from the Colorado River below Lake Mead. While He did entertain an equitable apportionment of the Gila River between New Mexico and Arizona. There is another clause in his decree which exempted the Gila River decree or any rights within that decree from being affected. He did increase New Mexico's rights over those which had been included in the decree because the decree only took in the Virden Valley in New Mexico. It did not take in any name as defendants the water users or people using waters on tributances of the main stream in New Mexico other than the Virden Valley. Does that answer your question, sir?

Mr. Pete Homer, Chairman, Colorado River Reservation:

Recently the State passed a law authorizing the Arizona Streams Commission to recommend the allocation of water within Central Arizona Project. Does that involve the Indians?

Mr. Goodhue:

The Indians can get water through the proposed Central Arizona Project just like any other user. When it comes to the allocation of this water, this is a matter which is going to have to be handled by agreement. If you happen to come from a reservation that wants some of that water, you'd better get in and start working early because the supply of water is going to be far less than the demand and it is only a supplemental supply which the Central Arizona Project intends to bring in here. Now some reservations are situated in such a way that they can take Colorado River waters direct (Salt and Gila River reservations). There are other reservations which might be able to get some type of exchange water. It all depends on the ultimate plan adopted, but the Indians, just like anybody else, are going to be competing for a share of whatever amount of water the Supreme Court says they can cut up. Mr. Rifkin's recommendation doesn't say a thing about how much is going to be available for the Central Arizona Project, because, very frankly, Mr. Rifkin's decree only cuts up the amount of water that is available in the main stream between the various states. How that water is used within the state is a matter of state control. The Indians' rights within Arizona, if affirmed by the Supreme Court, will not be under the State's jurisdiction in any way. Those rights will be satisfied out of the main stream by the United States through the irrigation systems which have been built or which may be built. The problem with the rest of the water in Arizona is that you have a number of irrigation projects using water in the Yuma area at this time. I can't tell you how much water it will take to satisfy those rights. The balance of the water could be available for use in central Arizona in any event but how much water mother nature gives us also determines how much is available.

Mr. Andrew Johnson, Chairman, Ft. McDowell Reservation:

When a river is running through a reservation, the public has the water right but when it percolates through the gravel to the ground does that belong to the ground or to the public?

Mr. Goodhue:

A water running through a reservation may or may not belong to the public. If the Supreme Court supports the contentions of the United States, it is unappropriated water. If it is a Fort McDowell situation, there are water rights which had been acquired which are passed through a reservation. There are rights in the Verde River, and it is passed through the reservation from the Horseshoe and Bartlett Dams down to the Granite Reef Dam and diverted. Now the natural stream losses that which goes into the soil may be a part of the subflow of the stream, that supports the surface stream, in which event it is a part of the

river itself. If water is irretrievably lost and it percolates into the ground and can't get back to the river and doesn't support any part of the surface flow, then they say this is percolating water which belongs to the over-lying owner. In the Ft. McDowell Reservation, it is a narrow valley. Engineering reports that I have seen indicated that the only underground waters there are a part of the surface stream.

Mr. Homer:

On the Colorado River Reservation, suppose it was necessary for us to put down wells for the irrigation of some of the higher land. Would that be determined as coming from the river?

Mr. Goodhue:

That, of course, is an engineering question again. In my own experience, along the Colorado River, I haven't found water coming from any source that wasn't Colorado River water. When you drill a well and you find a water table about two feet lower than the river itself, it comes from the river. It's part of the river, however, if the special master's findings are confirmed for the Colorado River Indian Reservation, there will be a sufficient water right for all the irrigable lands on that reservation. Whether you get it by direct diversion through the Head-gate Rock Diversion Dam or whether you pump it from wells or directly from the river, it would make no difference.

Mr. Robert Hurley:

Will you express your opinion of the use of water on-reservations for recreation as opposed to use of water for agriculture?

Mr. Goodhue:

That was one of the things I had in mind when I said there were other uses of water not related to agriculture. If the document of the Federal Power Commission vs. the State of Oregon applied to reservations in general, it seems to me that there might be a basis for establishing the use of water for recreational purposes on Indian reservations. At the present time, we have no case log which supports that position, we haven't litigated it. There are some states which say that the maintenance of a fish pond, whether it's on an Indian reservation or any place else (They don't draw the distinction), they say that's not a beneficial use of water. Other jurisdiction say that it is a beneficial use of water. The states themselves are not in agreement. As long as the Indians confine their uses of water to those which are reasonable and beneficial, I think the courts might go a long way in supporting them. If they start to waste water, I don't think that any court in the Southwest is going to support a waste of water whether it is done by an Indian or anyone else.

Mr. C. M. Wright, Attorney (Land Claims Consultant to the Commission):

LAND CLAIMS

About a year ago this month I talked to you about claims. Sorry I haven't been able to be here since then.

Today I would like to talk with you about happenings in claims that are highlights in the past year.

First of all a year ago we had the problem of extending the life of the Land Claims Commission. Since then Congress has passed a law extending the Claims Commission until 1967.

When that law was a simple extension, you remember a year ago we talked about some other possibilities that may have had some provisions for trial examiners and for increasing the size of the Commission and so forth. None of these were adopted. It was a simple extension adopted that the Commission will continue until 1967. So the Commission is just the same as it was a year ago.

What could happen in another year is that they may increase the size of the Commission and the President would appoint three instead of one. This would help speed up work. With more men you can close the cases faster.

Next, I want to mention that there has been a slow-down in the number of final decisions rendered during the last few years. Under Watkins chairmanship there have been fewer final decisions than there were during the years before. Up to January 1, 1961, there was only one case where the parties got together and agreed on a final settlement without going through trial to the very bitter end. Since then, in the last sixteen (16) months there have been approximately a dozen cases settled so they are settling more cases even though their final decisions are fewer.

In Arizona there are a number of tribes that have had land claims pending for some fifteen (15) years which have not yet come to trial. The Pima-Maricopa case is the next one set for trial in July, then the Apache case will go on trial in December, the Papago, Havasupai and Hopi trials will come in 1963 or later.

The remaining reservations that have been tried are Yuma, Chemehuevi, Hualapai, Navajo and Yavapai. Even though the trials are over, and some of them have been for years, there are only two judgements that have been rendered. Yuma and Mohave. For some reason or other the findings are not in or the court hasn't made a decision.

Possibly Mr. Marks can tell you the status of the Hualapai, Chemehuevi and the Havasupai.

Mr. Marks:

The Havasupai have until September to submit their findings. The findings are in on the Hualapai case and are going in on the Chemehuevi case. The Papago has been set for 1964.

They seem to go along all the time on what the government wants but they don't seem to care what the Indians want.

Mr. Wright:

That's right, the Department of Justice has the ability to get what it wants in the nature of continuances, delays, postponements and in exceptions to the rules. They don't follow the rules strictly. They don't get the exhibits in to the attorneys on the other side in time and they get away with it. They have been doing it for years and are still doing it. Now just because Mr. Marks says the findings are going in in other cases, that doesn't mean you are going to get a decision shortly. The government may well take two or more years to get its findings in. The rules say it is 60 to 90 days but that doesn't mean much. The findings were in in the Yavapai case a year and a half ago.

The Department of Justice hasn't yet filed its findings and they have had them for a year and a half. Sorry to disappoint you, Royal, but it may be a long time before the government gets their's in.

Mr. Marks:

I understand. It was 9 years before they filed action in the Papago case.

Mr. Wright:

Then after they file their proposal the Indians have a right to file a third set of findings to controvert the government's proposal and then there is a hearing on the findings.

Another thing that I might mention, there have been two cases tried in the courts that have caused a lot of talk. I'm going to mention them briefly but I don't think that they apply particularly at this time to any of you Arizona tribes. One is the decision in the Indian Claims Commission in the Crow case. After the Crow Indians got a final judgment for so many million dollars, the lawyers came in with their expense accounts showing how much they had spent over the years for travel, long distance calls, stenographic services, transcripts and all the costs. Included in these costs were fees they had paid to appraisers to appraise the land. The Indian Claims Commission decided the contracts they made to some of these appraisers were contingent upon recovery, that the more money the Commission decided the land was worth, the more money the appraiser would get. Now, if that's true, the Commission was right in throwing the claim out in this case the witness would no longer be unbiased and would be prejudiced because the higher he made the value, the more money he would get paid out of it so they threw that out and it has created a great deal of talk and controversy because it seems there are a number of contracts Indian lawyers have with appraisers that have the same language as in this Crow case and they may well have to be revised.

That may be appealed. The time for appeal hasn't expired.

The other case that caused a lot of talk was decided only about a month ago in April, a decision in the Court of Claims, the Appellate Court. They decided in the Pawnee case that they had made a mistake two or three years ago when they decided to the contrary so they reversed themselves. The Court of Claims reversed itself and it provoked a great deal of comment in editorials including the Washington Post. The papers said the Court is supposed to be the final arbitrator so what good is a decision if it can be upset by the same court that rendered it? There has been a lot of talk about this. The point involved was a mathematical point on how they determined the amount of offset to a claim where the offset was something the government owed them in installments. Because of this they had to reverse themselves.

Personally, I think the courts are just like anybody else, they are human beings and human beings make mistakes and you can expect a court to reverse itself once in a while if they find their predecessor has made a mistake. I don't get so alarmed about it as some people seem to be. We always run the risk that later the court will reverse itself. The Supreme Court of the United States has reversed itself over the years, not often but on occasion. Those are the highlights of the things that have happened in the past year as relates to claims. Specifically, what questions do you have?

Mr. Homer:

What are offsets usually based on?

Mr. Wright:

Monies the government has spent or appropriated for the benefit of the tribe. They offset that with what the tribe is credited with against the government. For instance, in the California case that was decided many years ago based on the value of the rights taken from them by treaty. I think the judgment of the court was 5 million odd dollars and the offsets were about 3 million. In other words, the court said the land the government took from these Indians and didn't pay for is worth about 5 million dollars.

But, over the years, the government has paid the Indians about 3 million with various other benefits and so will offset that and it leaves a balance of about 2 million that we owe. Usually the General Accounting Office in Washington determines the amounts of the offsets. They keep the books over the years and know how much the government has spent for any particular tribe.

This question of offsets is spelt right out in the Indian Claims Commission Act. It says in the act which things are offsetable and the court merely interprets the law. You've got a statute on it and the courts merely interpret it. It isn't a decisional law. It provides for offsets, if your offsets come within the statutes, they are allowed; if they do not, they aren't.

Mr. Homer:

Once a judgment has been made, how long does it take before they do anything about it?

Mr. Wright:

There have been two judgments in Arizona; they have been interlocutory judgments. The court has merely decided that the Indians are entitled to recover. That's the Yumas and the Mohaves. That is, Uncle Sam is liable. They have not yet determined what the dollar amount is. That will have to come later, but meanwhile, both of those cases are tied up in an appeal because they were consolidated with the Indians of California for trial and when the California Indians appealed and the Department of Justice (both sides appealed on the California case), they dragged in the appeals of the Mohaves and Yumas, too, so they are all tied up in appeals in the Court of Claims and those will probably be decided in another year. Then we still have to go back after that and have a further trial on the evaluation of the lands. So we won't get a final dollar in our judgment for at least two years and possibly longer.

Mr. Burgess Burke, Chairman, Salt River Reservation:

This is a vote of thanks that I want to express to the members of the Indian tribes here. Sometime ago we sent out some letters and resolutions to the Arizona Indian tribes asking them to help us in trying to get some more money from Congress from the deficiency appropriations for improving our water supply. Some of the tribes have passed resolutions urging our Congress delegation to consider our needs favorably in Washington. To those of you who helped and the Commission of Indian Affairs, I want to give the thanks of the Salt River Reservation.

THE MEETING WAS OPEN TO QUESTIONS AND ANSWERS.

Mr. Clarence Wesley, San Carlos Apache:

Where do we go from here? I appreciate the time and effort you gentlemen have given from their various operations. It seems to me like, in order to get things done, we must agree on something, either pass a resolution or go after it until we get this thing done. In the land claims, Mr. Wright told us that Mr. Watkins is anti-Indian and he is seventy years of age, he should be retired. How can we go about it to get him out? Maybe the Arizona Commission of Indian Affairs could pass a resolution as well as every tribe demanding that he be removed. President Kennedy said the best qualified men would represent the Indians in the various offices. It seems like we should remind him of the situation. This is the only way I think we can get this thing going and get it done so that judgment can be made before 10 years or some of us might go to the happy hunting ground before we see the money.

In so far as law enforcement is concerned, that is very important too. I think the application of Public Law 280 should be considered because we Indians of the reservations have special rights, that's true, but it seems to me like if we are to enjoy and try to assimilate into the full stream of the American ways of life, it seems to me like we should

just have one set of laws. How are we going to do it? This is an important problem we should all be concerned about.

The highway deal and fish and game, what are we going to do, just talk about it and then do nothing about it, or are we going to pursue it further until we get something done?

Mr. Morago:

I have a question for Mr. Corcoran or Mr. Magleby. The question was brought before the floor a while ago in regards to the revocation of drivers' permits in tribal courts. In my mind, the driving permit is a privilege issued by the State of Arizona. How would the application of jurisdiction be defined by the tribal court and how would it affect the motor vehicle responsibility division as a whole? Wouldn't there be a conflict?

Mr. Corcoran:

If the license was revoked by a state court or through a prosecution in a state court where this individual is driving off the reservation, then he of course must abide by the State code. Where there is no state code existing as far as a universal code, both with the state and the reservation when the individual is on the reservation, he is under the jurisdiction of the tribal court. If the tribal court sees fit to revoke this individual's driving privileges while he is on the reservation, that is in its jurisdiction. Now the only thing that I can see that would prevent a cooperative measure here between a state and tribal court, would be that a uniform traffic code could be established whereby the same definitions and the same provisions could be made in a tribal court that exist in a state court and a reciprocal agreement made so it could be applied. As it is now, there is no way either can deal in either case.

Mr. Morago:

Then if the tribes did adopt the uniform code, there would have to be in effect the measure to comply with point system or merit system or whatever it is. It would then be possible for the tribal courts to have it sanctioned by the proper authorities of the State?

Mr. Corcoran:

I think most certainly that a tribal court would be recognized as a law body empowered by the State of Arizona to hand down rulings especially on its own reservation. I can't see any other way it could be done. But of course this is something that would have to be worked out. As I mentioned before, we recognize that there have been many problems and that many steps have already been made in this direction and I think that as time goes along not too many years will elapse before we see this actually become a reality. I think this thing will evolve so we will have a real workable solution.

Mr. Magleby:

I might say that most of the tribes except the Gila River (and I think they are working on it) have adopted the provisions of the uniform Motor Vehicle Act excepting the financial responsibility act. Now the tribe would have to adopt an ordinance providing for it and the tribal court would receive its authority from the ordinance the council would adopt.

Mr. Burke:

Can the tribal court revoke licenses?

Mr. Corcoran:

This is something I really don't have any information on at the present time. I believe the only group that can actually revoke a driver's license is a Motor Vehicle Division a court passes its recommendation on to the Motor Vehicle Division which in turn has a hearing with this individual and then the license is either suspended or revoked. We would be more than happy to work in any way we can to see these things solved because we don't like to see people killed out there on the highway and we know you people don't either and any measures that we can work on together with you folks we'll be glad to do.

I talked to one of the deputy superintendents just before I came over here and I had anticipated that perhaps someone from a reservation police department would raise the question as to training. We have a real fine training staff at the academy there at the patrol headquarters. Actually, we are prepared to offer our training facilities to the reservations. If the councils would want to have us come out to the reservation or to any locality, we'd be more than happy to school any of the Indian police in any way we can. We would welcome the opportunity to participate with them. We'll go all the way in reaching out and doing what we can and there will no doubt have to be a certain amount of coming this direction on the part of the Indian tribe as well.

Mr. Hampton Haozous, Business Manager - San Carlos Reservation:

I'd like to direct a question to the Game Commission, the State game laws apply on our reservation. One of the things that we don't like are these problems resulting from State assistance. This last archery hunt we had for javelina, some outsiders killed one of our steers. As you people know, when you are using bows you have to get real close to an animal before you can shoot it. We were surprised that somebody would shoot a steer instead of a javelina. In the same vicinity, we had a gear mechanism on one of our windmills shot by high powered rifles. There were other animals killed by rifles also and the local ranger, Pat Kelly, told us about the problems that arose from that. He told us that it was hunters from the outside who came onto our reservation. We want to consider what can be done to remedy this. I'm wondering what policies you have covering the damages done by hunters?

Mr. Sorrells:

This problem is not only on the reservation. There is no conflict with the State. In other words, I don't know any one of our men who would say he had to have proof that it was a hunter. If it's a non-Indian, then the State would try to apprehend him and try him in a state court. If it was an Indian, we would turn over our information to the tribe. It is a violation of the law for people to destroy property, houses, windmills or whatever. The State has no provision to pay for this damage who ever did it. The individual committing the violation is the person we'd look to. During the general javelina hunt there were three individuals from Phoenix, non-Indians, off the reservation that shot up a water tank. They were brought before a justice court and I believe the fine was \$300 each. Since, it has been appealed to Superior Court and final disposition hasn't been made. We will do everything we can to assist in the apprehension and the prosecution of the person or persons guilty of doing this.

Mr. Haozous:

We referred this to the game ranger. He said we'd first have to prove it was a hunter who did it before he would do anything.

Mr. Sorrells:

I think there was an investigation made; however, his statement, if that was his statement, was incorrect it's immaterial at that point whether the person was a hunter or not. There has been personal property destroyed and we would want to assist in the apprehension of the guilty party. As I mentioned before, if he were a non-Indian he would be taken before a state court and, if he were an Indian, the evidence and information would be turned over to the tribe or tribal police.

Mr. Haozous:

We sent the arrow in with the game ranger and I don't know what happened to it. The State Bow Hunter's Association wanted to get that arrow to chase this thing down to see if they could find the owner. We lost the arrow, we don't know where it went.

Mr. Sorrells:

An investigation was made. Many arrows are marked in such a manner that they can determine who they belong to; however, that one was not identified as to the owner.

Mr. Enos Francisco, Chairman - Papago Reservation:

In regard to land claims, on a reservation that had 5 million coming and got 3 million dollars. When the Papagos get their judgment, will the government deduct all the monies that are being spent to help us now? If we win the case, will all this be deducted?

Mr. Wright:

Maybe I misled you. They don't offset everything that is expended for you over the years. So far, in all cases, the offsets have never equalled the judgment. Statute in the law itself tells which things can be offset. Always there is some offset but usually the offsets are relatively small. Usually they are not over 10% or 15% or so. In almost every case, the Indians have a substantial recovery after the offset. Now the attorneys' fees are fixed by contract, usually not over 10%. In solved cases, the court usually allows 10%. If it involves millions of dollars, the attorney's fee is usually cut to 7% or 8% of recovery. The appraisers fees and other costs are allowed over and above the judgment. For example, if the Papagos have a judgment for 10 million dollars and the offsets were one million and the attorney's fees were 8%, that would be \$800,000 the tribe would get; 8 million two hundred thousand dollars \$8,200,000, this would be a possible example.

Now, the other costs the attorneys have, including the appraisers have to be paid in addition. They are added to the \$10,000,000. If they are \$450,000, then the debt would be for \$10,450,000. That is roughly the way they run. You will end up in most cases as net around 75% or 80% of the amount.

Mr. Patch:

I have a question for Mr. Magleby. Just how much authority does a tribal policeman have over non-members? We have a security station down the road on the reservation. We have a road going through the reservation. The tribe, is doing some work on it and it looks like it may go over to the county. I have often wondered just how much authority tribal policemen have over non-members. You know, we have a lot of people doing business on our reservation like selling fertilizer and other commodities and I wonder, if any non-Indians is in the wrong on our reservation, if we would have the authority to stop them. How would this apply? Also, if they were off the county highway and on a reservation road?

Mr. Magleby:

A tribal policeman doesn't derive any authority from his tribe over non-Indians. Now, if there is a violation going on in your presence by a non-Indian, you might make a citizen's arrest. Some tribal policemen have commissions as deputy sheriffs and through that commission they enforce the law against non-Indians. You talk about a situation where a man is on the highway and one is off. There are some provisions there. If the man is a trespasser on the reservation, he can be removed. I wouldn't call a man that's going down the highway a trespasser.

Mr. Patch:

You mean if he is traveling through in an automobile?

Mr. Magleby:

Yes.

Mr. Burke:

Can our Indian police be deputized as deputy sheriffs and arrest non-Indians on the reservation?

Mr. Magleby:

Yes. Some tribal police are deputy sheriffs and they arrest non-Indians.

Mr. Oliver Moristo, Papago Reservation:

Question directed to the Commission. Recently, the problem came up about payment for our jobs. Part is paid by the government and part is paid by our tribe. I don't see it has any bearing who pays us, the tribe or the federal government. We will look into it and find out more about it as we go ahead. I would like to get your opinion about this, if I can.

Mr. Charles Gritzner, Executive Secretary, Commission of Indian Affairs:

We are actually not in a position to give an opinion on this at this time. If your council seriously desires information in this area, the Commission would present its concern to our Law and Order Advisory Committee consisting of Mr. Robert Pickrell, Attorney General; Mr. Grant Magleby, B.I.A. Area Criminal Investigator; Mr. Clifford Sorrells, Chief of Law Enforcement; Mr. Thomas R. Cochran, Deputy Superintendent, and Mr. Royal Marks, Attorney at Law. These men advise us on these matters because they know the answers. The Commission depends on these experts for help in bringing you advise on these problems.

Vice-chairman Eddy:

At this time, ladies and gentlemen, our co-chairman, of the joint meeting, Mrs. Eva Northrup, President of the Inter-Tribal Council, has arrived and she has requested that all tribal chairmen will please remain after this program.

Mr. Homer:

I haven't been too happy about contracts on the Colorado River Reservation where a vacancy occurs for contract work for a weed burner or a ditch rider when Indians are known to be qualified and they hire non-Indians to do these jobs.

At one time, I went to the Superintendent inquiring about this. He said they have a board that passes those fellows and makes recommendations to the area office and then employment is made there. I asked in this case that some of these men are qualified and he put in white men. He said that "as long as I'm here I will have the most qualified person" I can concur with him on specialty jobs but not where our men can do the job. I want to put this out. I want something done if possible.

Vice-chairman Eddy:

I think the question should have been directed to Mr. Haverland.

Mr. Fred Haverland, Area Director, B.I.A.:

Do you want me to answer?

Vice-chairman Eddy:

Yes.

Mr. Haverland:

I do not know the details of the particular situation he refers to but we will certainly look into it and this goes for all Indian Bureau activities. Wherever there is a qualified Indian, we will hire him.

Mr. Manuel:

To accomplish what has been discussed today it should be a tri-lateral thing. The state, federal government and tribes should unite in trying to bring some solutions for these problems we have before us now.

We will find that some of these reservations who are lacking the necessary funds to qualify them to do the things we have discussed are not receiving and they don't have these things available for them. If we are going to adopt this motor vehicle code, it must be understood as it is written it needs to have qualified people in the tribal courts.

I say the tribal courts have been unable to make any significant developments socially, economically or judicially because of some of these things. It seems we do not think about these things; we don't get concerned; we don't seem to want to improve or get a solution among the Indians of the State of Arizona.

There was mentioned a need to train officers. I say there is also a need to train the tribal judges. This is where definite improvement is needed. This has to be done if we want some improvement on these problems or solutions. That is why this must be a tri-lateral effort or undertaking before we can do something to find the solutions to these problems. (I'm not mad) (Laughter)

Mr. Magleby:

Last winter we had a school for judges in Tucson. We believed that was very helpful and the Bureau has in mind a continuation of the school for judges. Yesterday we sent out an announcement of a judges seminar to be held in the Federal Building June 11, 12 and 13. Tribal attorneys and judges will participate in that. The state and county people are also invited to come in and help.

Mr. Haverland:

As I understand the question Mr. Moristo directed to you, Mr. Eddy, whether or not the employment of law enforcement officers by the federal government will have some effect on the application of Public Law 280 on their reservation? I think I might as well answer this here. Whether or not the police officers are hired by the tribe or the federal government, will not affect the Bureau relationship under Public Law 280.

I think that will answer that.

Vice-chairman Eddy:

I understood the question differently. I thought he was raising the question as to who's to pay. Evidently he has an officer that's paid by the tribe and one that's paid by the Bureau.

Mr. Haverland:

We have some combinations where the tribes pay for their judges, where the federal government does it and other combinations where, for a certain number of days the judge is paid by the tribe and other days when he is paid by the federal government. But none of these arrangements has any effect on whether the tribe must accept Public Law 280 as it would apply to their reservation. Public Law 280 applies to their reservation but the application of State law to their reservation is a choice that they still have.

Vice-chairman Eddy:

The Commission is most grateful to the members of this panel. They represent different state and federal departments. We appreciate the cooperation of their agencies in making this afternoon session so helpful and we hope valuable to tribal leaders present and also to the leaders absent who will receive a report of this meeting. We also wish to thank Senator Morrow and our Land Claims Consultant, Mr. C. M. Wright.

Be sure to attend the continuation of this meeting here at 9:00 A.M. in the morning with the Inter-Tribal Council.

ATTENDANCE LIST

Clay Lockett, Commission Member

Ray Narcho, Papago

Nathan E. Seldin, B.I.A. Phoenix Office, Welfare Branch

Marvin Mull, San Carlos

Hampton Haozous, San Carlos

Harrison Porter, San Carlos

Thomas B. Noise, Bylas

James E. Goodhue, Staff Attorney, U.S. Dept. of Interior, Los Angeles

Grant Magleby, Area Criminal Investigator, B.I.A., Phoenix

Mrs. Paul Jones, Window Rock

Jay Morago, Jr., Pima-Maricopa

Larry Corcoran, Arizona Highway Patrol

Freeman P. Walker, Sacaton

Cliff Sorrells, Arizona Game & Fish Department

Royal D. Marks, Attorney at Law

Pete Homer, Sr., Colorado River Reservation

Edison Evans, Gila River Council

C. M. Wright, Attorney at Law, Tucson

Burgess Burke, Salt River-Pima Maricopa

Dr. Robert Roessel, Arizona State University

Mrs. Ruth Roessel

J. Glancy, Representative, Mohave

Paul Bramlet, B.I.A., Phoenix

Honorable Bert J. Colter

Fred Haverland, B.I.A., Phoenix

Eva Northrup, Hopi

Robert Morfitt, U.S. Public Health Service

ATTENDANCE RECORD (Continued)

Paul Jones, Window Rock
Enos J. Francisco, Papago
Oliver Moristo, Papago
Cipriano Manuel, Papago
Vernon Jake, Kaibab-Paiute
Bill Tom, Kaibab-Paiute
Clarence Wesley, Apache
Dan Eddy, Colorado River Reservation
Ross Anderson, Assistant Attorney General
Henry Keneally, U. S. Public Health Service
Pat Nelson, Chief of Police, Window Rock
Robert Morrow, Senator, Kingman
Robert W. Pickrell, Attorney General
Ambrose Jackson, Pima
Dan Martinez, Mohave
Leroy Eswornia, Mohave
Roland Scott, Mohave
Albert Homer, Mohave
Luke Patch, Mohave
Andrew Johnson, Yavapai
Walker Pulshiper, Representative
Evelyn Cooper, Secretary